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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,084	03/26/2004	Charles R. Sherts	1830CONDIVCON3 (203-1742C)	8216

7590

12/13/2004

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EXAMINER
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RAMANA, ANURADHA

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/810,084

Applicant(s)

SHERTS ET AL.

Examiner

Anu Ramana

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/12/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

The disclosure is objected to because of the following informalities. The information provided under "Cross reference to Related Applications" must be updated to include corresponding patent numbers for applications that have issued as patents. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3 and 5-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Michelson (US 5,513,827).

Michelson discloses an instrument having an articulating arm 260 with a plurality of link members 272 concatenated by a cable 262 passing through a bore in each link member; a mounting assembly 214; an actuator 238 which locks arm 260 and secures the position of assembly 214 with respect to the instrument base 202; a tissue engaging member S operatively connected to the arm; a fixed handle 244; and a toggle handle ("a handle having two configurations or positions") 246 wherein movement of the toggle handle from the first position to a subsequent position stresses cable 262 (Figs. 1-5, col. 4, lines 19-67, col. 5, lines 1-67, col. 6, lines 1-65 and col. 8, lines 58-65).

Claims 1-3 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Kieturakis (US 5,624,381).

Kieturakis discloses an instrument for stabilizing tissue 10 including an articulating arm 12 having a plurality of links 20a, b, c...; a tensioning member or "cable"

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27; an actuator 60; a base 15; a mounting assembly 20z; and a suction device (70, 77) operatively associated with the articulating arm (Figs. 1-3 and 6, col. 3, lines 44-67, col. 4, lines 1-54 and col. 5, lines 16-34).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Michelson (US 5,513,827), as applied to claim 1, further in view of Tyagi (US 5,755,660).

Michelson discloses all elements of the claimed invention except for a suction device operably associated with the articulating arm.

Tyagi teaches a suction means 19 unitary with a retractor blade 14 and thus operatively or "physically" connected to the shaft of the retractor for a surgical procedure requiring application of suction (Fig. 7 and col. 3, lines 23-27).

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a suction means 19, as taught by Tyagi, on the blade of instrument S in the Michelson device, for surgical procedure requiring application of suction.

Claims 1 and 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benetti et al. (US 5,894,843) in view of Michelson (US 5,513,827).

Benetti et al. disclose an instrument for stabilizing tissue including a tissue-engaging member having a frame with a pair of legs extending therefrom and a shaft 3 with a plurality of links 38 that can have a flexible, lockable conformation by means of a cable 39 running through each link (Figs. 1 and 6, col. 7, lines 6-67, col. 8, lines 1-67, col. 9, lines 1-6, col. 11, lines 31-67 and col. 12, lines 1-4).

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Benetti et al. disclose all elements of the claimed invention except for an actuator that applies to tension 39 and also locks the mounting assembly relative to the instrument base 15.

Michelson teaches a mounting assembly 214 with an actuator 238 wherein movement of the actuator 238 causes tightening of a cable 262 and also secures the shaft 260 of an instrument with respect to an instrument base 202 in one motion (Figs. 1-5, col. 4, lines 19-67, col. 5, lines 1-67, col. 6, lines 1-65 and col. 8, lines 58-65).

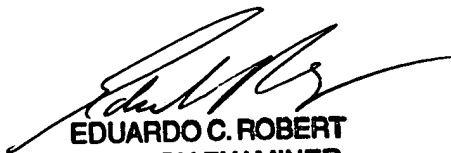
Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided an actuator and mounting assembly combination, as taught by Michelson, to enable tightening of the cable and securing the position of the shaft with respect to the base in the device of the combination of Benetti et al. and Michelson, in a single motion.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached at (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AR *Anuadha Ramana*  
December 4, 2004

  
EDUARDO C. ROBERT  
PRIMARY EXAMINER